IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

OP.No. 1059 of 2003(A)

PETITIONER:

JOSE D.MANAVALAN, S/O.DEVASSYKUTTY,
AGED 40, MANAVALAN HOUSE, KOTTAMAM,
KALADY VILLAGE, ALUVA TALUK.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE DY.COLLECTOR, ERNAKULAM.

2. TAHSILDAR TALUK OFFICE, ALWAYE.

3. VILLAGE OFFICER, KALADY VILLAGE.

BY GOVERNMENT PLEADER, SRI.MATHEW JOSEPH VADAKKEL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.1959/2003 & I.A. NOS.6800/2003 & 3720/2005 IN OP NO.1059/2003.

DISMISSED

SD/-

18/8/07 T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE INVITATION LETTER.

EXT. P2: COPY OF THE BUILDING TAX RECEIPT 1997-98.

EXT. P3: COPY OF THE DEMAND NOTICE DATED 3-6-2002.

EXT. P4: COPY OF THE REPRESENTATION DATED 19-6-2002.

EXT. P5: COPY OF THE CERTIFICATE.

EXT. P6: COPY OF THE ORDER DATED 26-8-2002.

/TRUE COPY/

P.A. TO JUDGE

JP

T.R. Ramachandran Nair, J.

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O.P.NO.1059 of 2003-A

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Dated this the 18th day of August, 2007

JUDGMENT

The petitioner is aggrieved by the order Ext.P6 issued by the second respondent imposing luxury tax on his building. The case of the petitioner is that he constructed the residential building in the year 1997 and started residing in the said building from 1.1.1998 onwards. To substantiate the same, Ext.P1 invitation card has been produced which relates to the function conducted for house warming on 1.1.1998. Malayattoor – Neeleeswaram Grama Panchayat has imposed building tax after numbering the building as X/584-A which is evidenced by Ext.P2. The same is dated 31.3.1998. Ext.P3 is the notice by which the authority wanted him to remit the luxury tax to which he submitted Ext.P4 objection. In Ext.P4, he has clearly stated that the building was constructed prior to 1.4.1999 and he has also produced certificates from the Panchayat as well as the receipt for payment of building tax. Ext.P5 is the certificate issued by the Malayattoor – Neeleeswaram Grama Panchayat stating that the building in question has been completed during 1997-98.

2. Ext.P6 is the order passed by the second respondent wherein none

of the above aspects have been discussed or considered. The liability to pay luxury tax is contained in Section 5-A of the Kerala Building Tax Act which provides that "notwithstanding anything contained in this Act there shall be charged a luxury tax of Rs.2,000/- annually on all residential buildings having a plinth area of 278.7 sq. meters or more and completed on or after the first day of April, 1999." Therefore, only if the building was completed on or after 1.4.1999 alone, the liability to pay luxury tax arises and this is a crucial aspect which should have been considered by the second respondent before passing Ext.P6. Unfortunately, in spite of the objection filed by the petitioner and in spite of the the production of relevant materials by him, the said aspect has not been considered. The question is one depending upon the date of construction of the building, viz., on or after 1.4.1999 and the said issue is a crucial one as far as the liability on the part of the petitioner to pay the tax is concerned. Since those aspects have not been considered, Ext.P6 is passed without any application of mind and without considering the effect of Section 5-A.

3. For all these reasons, I quash Ext.P6. The second respondent is directed to consider the matter afresh and pass a reasoned order after affording an opportunity of hearing to the petitioner and after allowing him to produce relevant evidence, if any, in the matter. The same shall be done

as expeditiously as possible. The interim order passed by this court in I.A. No.6800/2003 and extended as per order dated 18.3.2005 in I.A. No.3720/2005 will continue in force till orders are passed and communicated to the petitioner.

The original petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

kav/

T.R. Ramachandran Nair, J.

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O.P. No.1059 of 2003-A

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JUDGMENT

18th August, 2007.